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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative texts.

SPAIN

Communicated by the Government of Spain

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

4252 CONSTITUTIONAL LAW No. 1/1992 OF 21 FEBRUARY ON THE PROTECTION OF PUBLIC SAFETY

Official Gazette No. 46

Saturday, 22 February 1992

I. General provisions

OFFICE OF THE HEAD OF STATE

4252 Constitutional Law No. 1/1992, of 21 February, on the Protection of Public Safety

Juan Carlos I
King of Spain

To all those who see and hear the following Constitutional Law, know that it has been approved by the Parliament and that I have sanctioned it.

Explanation of reasons

The protection of public safety and the exercise of public freedoms are two inseparably related concepts, both being fundamental requirements for a well-ordered democratic society.

The Constitution confers general powers on the State in the area of public safety (article 149.1.29) and, specifically, assigns to the Security Forces and Bodies, under the control of the Government, the task of protecting

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the unimpeded exercise of rights and freedoms and of guaranteeing the safety of the citizenry (article 104.1), in addition to which it regulates the exercise of a number of fundamental rights, such as the right to freedom, the right of freedom of movement within the national territory and of free entry into and departure from Spain, and the right of assembly.

Since the promulgation of the Constitution, the Parliament has unceasingly endeavoured to maintain the proper balance between freedom and safety by empowering the appropriate authorities to carry out their constitutional duties in the area of safety. To that end, it has approved a number of general constitutional laws, such as that of 1 June 1981 on the states of alarm, emergency and siege; that of 1 July 1985 on the rights and freedoms of foreign nationals in Spain; and that of 13 March 1986 on Security Forces and Bodies. In addition, special laws have been enacted, such as that of 15 July 1983, regulating the right of assembly; that of 21 January 1985, on civil protection; and that of 25 July 1989, containing fundamental provisions on traffic, the circulation of motor vehicles and road safety. Measures have also been introduced to prevent violence at sporting events under the Sports Act No. 10 of 15 October 1990, Title IX of which deals with that subject.

Nevertheless, in order to supplement the authorities' powers, as brought up to date and harmonized with the Constitution, and to protect public safety, it is considered necessary to establish the scope of the administrative authorities' responsibility in such areas as the manufacture, trading, possession and use of firearms and explosives; concentrations of persons at events; and the personal documentation of citizens and foreign nationals in Spain, and also to regulate certain activities that are of special interest to the Security Forces and Bodies and for which they have a special responsibility.

The consideration of mass phenomena involving threats, coercion or violence, with serious repercussions on the operation of public services and on community life, makes it necessary to provide for a response that is appropriate to the nature of these phenomena and consistent with constitutional requirements.

For all of these reasons, the Public Order Act, which was so emblematic of the previous political regime and which has virtually fallen into disuse, is formally repealed, independently of the fact that certain of its provisions have already been expressly annulled.

Chapter II of the new Law regulates activities connected with firearms and explosives, authorizing the intervention of the State in the entire process of their production and sale and also in their possession and use, recognizing the restrictive scope of administrative authorizations to that end, regulating the prohibition of certain firearms, munitions and explosives of a particularly dangerous nature, and regarding as a sector subject to special regulation the setting up of establishments at which firearms or explosives are manufactured, traded or distributed.

This chapter also sets forth the purposes to be pursued through the policing measures that the Government may be required to order with regard to public spectacles and recreational activities, without prejudice to the jurisdiction that the Autonomous Communities are recognized as having in this area under their relevant statutes.

In this chapter, the Law also lays down, for persons who have completed 14 years of age, the right and duty to obtain a national identity document, which by itself shall be sufficient to establish the identity of citizens, guaranteeing in all cases respect of the right to personal privacy and prescribing that the data contained in the document may not refer to the bearer's race, religion, opinions, ideology, political or trade-union affiliation, or beliefs. The Law regulates the issue of passports or of documents used in their stead, and establishes that foreign nationals in Spain must carry an identification document, which may not be taken away from them except under the same circumstances that warrant the withdrawal of the national identity document.

Finally, in Chapter II the Government is authorized to regulate certain registration and information requirements of increasing importance to public safety, including the operation of high-speed vessels, and to order particular concerns or establishments that are especially vulnerable or whose operations involve direct risks to third parties to adopt such safety measures as may be required.

Chapter III provides the authorization to carry out actions aimed at maintaining or restoring public safety, particularly at times of serious mass disturbances or threats to public order. For example, the authorities are authorized to close premises or establishments and to evacuate buildings during emergency situations or in circumstances that warrant it, and also to order the suspension of shows and spectacles, the vacating of premises and the temporary closure of establishments whenever they have become the scene of serious disturbances of public order. There is provision for the limitation or restriction of movement or presence in streets or public places in situations in which public order and safety have been disrupted. The Law permits the introduction of controls on the streets and in public places or establishments for the purpose of discovering and apprehending the

participants in a crime and of securing the instruments, property or evidence connected therewith.

The conditions are stipulated under which agents of the Security Forces and Bodies may, whenever it is necessary for the exercise of their duty to protect safety, require persons to identify themselves. Persons unable to show any identification may be called upon to report to a nearby police station, but for the purpose of identification only. In other words, there is no change in the currently applicable rules governing detention, which in future as well may be ordered only against a person suspected of having committed an offence and not because of a person's inability to identify himself. Provision is made for the case of persons who resist identification or, without valid reason, refuse to identify themselves, which is treated in accordance with the provisions for infractions of this kind contained in the Criminal Code currently in force.

Also regulated are the conditions and circumstances under which, as permitted by the Constitution and the laws, the need for a court-ordered warrant to enter homes in order to combat crimes as harmful to the safety of the citizenry as those connected with narcotics trafficking may be dispensed with.

Chapter IV establishes a system of penalties that makes it possible to achieve the purposes of the Law and comply with the relevant constitutional guarantees. It describes offences against public safety, distinguishing between very serious offences, serious offences and minor offences. Specifically included among the serious offences is the consumption in public places of toxic drugs or narcotic substances or their unlawful possession; these offences may be penalized with the suspension of the offender's licence to drive a motor vehicle for a period of up to three months, or with the withdrawal of his firearms permit or licence. In line with the resocializing and not merely retributive purpose of punishment, for these infractions this Law provides for the possibility of suspending the penalty in cases where the offender submits to a programme of detoxication treatment at an officially recognized centre or service. In addition, Chapter IV specifies the penalties to be imposed and the authorities with competence in this area, establishing a penalty procedure incorporating the proper guarantees. Under the Law, the Office of the Public Prosecutor (Ministerio Fiscal) is required to forward to the penalizing authority the documentation regarding sentences of acquittal or orders for the stay or discontinuance of proceedings whenever the facts do not constitute a criminal offence but may represent an administrative infraction as provided for in this Law.

Finally, this Law, in its additional provision, in its final provisions 1 and 2, and in article 2 and other related articles, clearly respects the constitutionally established system of competence as defined in articles 104 and 149.1.29 of Constitutional Law No. 2/1986 on Security Forces and Bodies and in the autonomy statutes of the communities with competence in this area. Accordingly, local authorities will continue to exercise their powers under the Constitutional Law on Security Forces and Bodies and the legislation on local regulations, public spectacles and classified activities.

It is believed that in this way it will be possible to facilitate and guide the task of ensuring a safe and well-ordered society in which rights and liberties can be exercised, through the elimination of violence in social relationships and the removal of the obstacles standing in the way of the full enjoyment of these rights and freedoms. This is a task that represents one of the principal reasons for the existence of the authorities to which this Law refers and of the Security Forces and Bodies operating under their orders.

CHAPTER I

General Provisions

Article 1

1. In accordance with the provisions of articles 149.1.29 and 104 of the Constitution, it is the task of the Government, through the authorities and the Security Forces and Bodies operating under its instructions, to protect the free exercise of rights and freedoms and to guarantee public safety, to create and maintain conditions conducive to those purposes, and to remove the obstacles that impede them, without prejudice to the powers and duties of other responsible public agencies.

2. This competence includes the exercise of the administrative powers provided for in this Law, for the purpose of ensuring a well-ordered society, the eradication of violence and the peaceful use of public thoroughfares and spaces, and also of preventing the commission of crimes and offences.

Article 2

1. For the purposes of this Law, the following persons are the competent authorities in the area of safety:

(a) The Minister of the Interior;

(b) The heads of the higher and policy-making organs of the Ministry of the Interior who have been entrusted with that responsibility under legal or regulatory provisions;

(c) The civil governors and the Government's representatives in Ceuta and Melilla;

(d) The Government's representatives in territorial divisions smaller than a province.

2. Without prejudice to the provisions of the preceding paragraph, the local authorities shall continue to exercise their rightful powers in accordance with the Constitutional Law on Security Forces and Bodies and the legislation on local regulations, public spectacles and recreational activities and also on disturbing, unhealthy, harmful and dangerous activities.

Article 3

1. In addition to the areas of competence regulated in other laws, the Ministry of the Interior shall be competent in the areas of firearms and explosives; public spectacles and recreational activities; personal documentation and identification; and prevention, maintenance and restoration of public safety, as regulated in this Law.

2. The Ministry of the Interior shall also be responsible for general planning, coordination and control of the safety of persons, buildings, installations, activities and objects of special interest, in which connection it shall propose or order the adoption of the measures, or the approval of the regulations, that are necessary.

Article 4

1. In areas subject to administrative powers for special policing operations and not expressly assigned to organs of the Ministry of the Interior, these organs may intervene only to the extent required to ensure the achievement of the purposes provided for in paragraph 2 of article 1.

2. These same organs, through their agents, shall be required to provide the necessary executive support to any other public authorities who request it in order to ensure the enforcement of the laws.

Article 5

1. Within the limits of their competence, all public authorities and officials must cooperate with the authorities referred to in article 2 of this Law and provide them with such assistance as may be possible and sufficient for the achievement of the purposes provided for in article 1.

2. Where necessary and to the degree required for carrying out the functions entrusted to them under this Law, the authorities regarded as competent for the purposes of this Law and the members of the Security Forces and Bodies may also obtain the help and cooperation of private individuals, provided that this does not place them at personal risk, and may avail themselves of whatever is strictly required to ensure the enforcement of the laws and the exercise of rights. Persons who suffer injury or loss as a result of these actions shall be compensated in accordance with the law.

3. Any public authorities and their agents who become aware of facts representing a serious disruption of public safety and, as a result, of the exercise of constitutional rights must report this to the judicial or governmental authorities.

CHAPTER II

Preventive Measures and Supervision

Part One. Firearms and Explosives

Article 6

1. Exercising its authority under article 149.1.26 of the Constitution, the Government shall establish the requirements and conditions for the manufacture and repair of firearms, their imitations and replicas, and their principal components, and also of explosives, cartridges and fireworks, as well as the requirements and conditions for their movement, storage, trading, acquisition, transfer, possession and use. It may also adopt the monitoring procedures required to ensure the observance of these requirements and conditions.

2. The authorities and services authorized to act in this area may at any time carry out such inspections and verifications as may be necessary on the premises of factories, workshops, depots, and places where firearms and explosives are sold or used.

Article 7

1. The Government is authorized to regulate the areas and activities referred to in the preceding article, having regard to the particular circumstances in the various situations:

(a) By making the opening and operation of factories, workshops, depots, and places for the sale and use of firearms and explosives, and also the related activities, subject to requirements of cataloguing or classification, authorization, information, inspection, supervision and control, and also to special requirements with regard to the licensing of the personnel responsible for handling these items;

(b) Through the mandatory need to obtain a licence or permit for the possession and use of firearms, with the issuance of these licences or permits to be restricted, especially in the case of weapons for personal protection, for which they shall be granted only in cases where such weapons are strictly required;

(c) Through the prohibition of certain firearms, munitions and explosives of a particularly dangerous nature, and of their storage.

2. The manufacture, trading or distribution of firearms and explosives represents a sector subject to special regulation as regards the right to set up establishments, subject to the provisions of article 20.2 of the Foreign Investments in Spain Act and, in any case, under the control of the Ministries of Defence and the Interior.

Section Two. Public Spectacles and Recreational Activities

Article 8

1. All public spectacles and recreational activities shall be subject to such administrative policing measures as may be ordered by the Government with a view to the following purposes:

(a) To guarantee public safety against the possible risks, to persons or their property, that might arise from the behaviour of those organizing a spectacle or recreational activity, participating in it or attending it;

(b) To ensure public order in cases in which it might be disrupted by the holding of a spectacle or activity;

(c) To limit the activities held on public premises or in public establishments to those that have been authorized and, in any case, to prevent the holding there of any other activities that are prohibited;

(d) To establish the conditions to be observed in the organization of ticket sales at, and timing of the beginning and end of spectacles or recreational activities whenever necessary to ensure that they take place in an orderly manner.

2. In all cases, sporting events shall be subject to the measures for the prevention of violence provided for in Title IX of the Sports Act No. 10 of 15 October 1990.

Section Three. Personal Documentation and Identification

Article 9

1. All Spaniards shall be entitled to the issuance of a national identity document, which shall be legally protected in the same way as public and official documents and shall, by itself, be sufficient to establish the identity of the bearer.

2. All persons who have completed their fourteenth year shall be required to obtain a national identity document. This document may not be transferred. The person to whom it is issued shall be responsible for safeguarding it and may not be deprived of it, even temporarily, except in the cases where, in accordance with the law, another document is to be used in this stead.

3. The national identity document shall contain the bearer's photograph and signature and such personal data as may be statutorily required. These data shall be such as to respect the person's right to privacy and may not, in any case, relate to his race, religion, opinions, ideology, political or trade-union affiliation, or beliefs.

Article 10

1. Spaniards may enter the national territory at any time by establishing their nationality. Persons wishing to leave Spain shall be required to have a passport or some

other document statutorily established under the terms of the international agreements to which Spain is a party, these documents to be deemed equivalent to the national identity document.

2. The passport or document used in its stead shall be issued to Spanish citizens, except in cases in which the applicant has been sentenced to a punishment or security sanction involving the loss or limitation of his right of residence or movement, as long as the punishment or sanction remains in force, or when the judicial authorities have ruled that it may not be issued or that, where charges are pending in a criminal case, the person in question may not leave Spain. Nevertheless, persons falling under the first of the exceptions indicated shall be issued with the documents in question, provided that they obtain authorization from the competent judicial body.

3. The passport or document used in its stead shall be issued to a person under parental authority or guardianship if that person has the authorization of the parent or guardian or, failing that, of the competent judicial body.

4. The passport or document used in its stead may be withdrawn by the same authority responsible for issuing it whenever circumstances arise to warrant its denial, as a consequence of the judicial orders referred to in paragraph 2. In these cases, and to the extent that the national identity document is used in place of a passport, the owner shall be provided with another document, to be issued for the purposes of identification only.

Article 11

Foreign nationals on Spanish territory are required to have a document establishing their identity and the fact that, under the provisions of the regulations in force, they are legally in Spain. This document may not be taken from them except in the same cases as those that apply to the withdrawal of the national identity document.

Section Four. Activities of Relevance to Public Safety

Article 12

1. Individuals or bodies corporate that conduct activities of relevance to public safety, such as the provision of accommodation, the trading or repair of used objects, the rental or demolition of motor vehicles, or the buying and selling of gems or precious metals, must perform the procedures of document-based registration and notification provided for in the regulations in force.

2. For reasons of safety, restrictions may be placed on the operation of high-speed vessels, their owners being required to perform the procedures of document-based registration and notification provided for in the rules in force.

3. In the same way, the Government may introduce a registration requirement for the manufacture, storage and trading of chemical products capable of being used in the production or processing of toxic drugs or of narcotic, psychotropic and other substances seriously harmful to health.

Section Five. Safety Measures at Establishments and Installations

Article 13

1. The Ministry of the Interior may order, in accordance with statutory provisions, the adoption, at industrial, commercial or service establishments and installations, of the safety measures required to prevent the commission of possible criminal acts against those facilities whenever they are the source of direct risks to third parties or are especially vulnerable.

2. The above notwithstanding, the competent authorities may exempt establishments from the introduction or maintenance of mandatory security measures whenever the specific circumstances in question render them unnecessary or inappropriate.

3. The opening of such establishments as are required to adopt security measures shall be contingent on the verification, by the competent authorities, of the suitability and adequacy of those measures.

4. The owners of the establishments and installations shall be responsible, in accordance with the relevant regulations, for the adoption or installation of the mandatory security measures or devices, their proper operation, and the achievement of the protective and preventive purpose specific to each of them, without prejudice to any liability that may be incurred by their employees in this respect.

CHAPTER III

Measures for the Maintenance and Restoration of Public Safety

Article 14

The competent authorities, acting in accordance with the laws and regulations, may issue the orders, impose the prohibitions and call for the police measures that are strictly required to ensure the achievement of the purposes provided for in article 1 of this Law.

Article 15

In emergency situations in which the particular circumstances make it necessary, and for as long as those situations continue, the competent authorities may order, as exceptional security measures, the closure or evacuation of premises or establishments, the vacating of buildings or the storage of explosives.

Article 16

1. The authorities referred to in this Law shall adopt the measures required to provide protection at meetings, demonstrations and public spectacles in an effort to ensure that public safety is not disrupted. However, they may suspend spectacles and order the evacuation of premises or the temporary closure of public establishments when there are no other means of halting serious disruptions of safety that have already started.

2. These same authorities, acting through the Security Forces and Bodies, may break up, using as little force as possible, meetings in public thoroughfares and demonstrations in the cases provided for in article 5 of Constitutional Law No. 9/1983, of 15 July, which regulates the right of assembly. Concentrations of vehicles in public streets may also be dispersed and the vehicles or any other kind of obstacles removed whenever they impede, endanger or obstruct traffic through those streets.

Article 17

1. Before carrying out the measures referred to in the preceding articles, the operational units of the Security Forces and Bodies must give warning of those measures to the persons concerned.

2. When there are disruptions of public safety involving the use of firearms or other weapons, the Security Forces and Bodies may break up a meeting or demonstration, or remove vehicles and obstacles, without being required to give prior warning.

3. In the cases referred to in the preceding articles, any employees of private firms providing guard and security services that may be present must cooperate with the Security Forces and Bodies in matters regarding the interior of the premises or establishments at which they are employed.

Article 18

The authorities' agents may, in all cases, carry out the checks necessary to prevent the illegal carrying or use of firearms in public streets, places or establishments, and may confiscate them. They may even temporarily confiscate firearms for which the bearer has a licence or permit, or any other weapons, if they deem it necessary, for the purpose of preventing the commission of any offence or when there is a danger to the safety of persons or property.

Article 19

1. The agents of the Security Forces and Bodies may limit or restrict, for the time required, movements or presence in public streets or places whenever public order, safety or peace have been disrupted and must be restored. In addition, they may, as a preventive measure, confiscate property or instruments capable of being used to commit illegal actions and may dispose of them in the manner provided for under the law.

2. For the purpose of discovering and apprehending the participants in a crime that has caused serious concern to society, and of securing the instruments, property or evidence connected therewith, controls may be introduced in public streets, places or establishments to the extent required for the achievement of the purposes of this section and for the purpose of identifying the persons present there and of carrying out vehicle searches and cursory examinations of personal effects so as to ascertain that no prohibited or dangerous substances or instruments are being carried. The Office of the Public Prosecutor shall be immediately informed of the results of those actions.

Article 20

1. In carrying out their investigative or preventive functions, the agents of the Security Forces and Bodies may require the identification of persons, carrying out the

relevant checks in the street or place where such identification is required, provided that the knowledge of the identity of the persons questioned is necessary to the performance of the safety protection functions entrusted to the agents under this Law and the Constitutional Law on Security Forces and Bodies.

2. If identification is impossible by any means, and when it is necessary for the same purposes as set forth in the preceding section, the agents may, in order to prevent the commission of a crime or offence or to punish an infraction, call on persons unable to identify themselves to accompany them to a police station located in the vicinity and properly equipped to carry out the identification procedures. They may do this for this purpose only and only for the time required.

3. The stations referred to in the preceding section shall maintain a register in which entries shall be made of the identification procedures carried out there, stating the reason for and duration of those procedures. This register shall be permanently available to the competent judicial authority and to the Office of the Public Prosecutor. The foregoing notwithstanding, the Ministry of the Interior shall on a regular basis forward extracts of the identifications carried out to the Office of the Public Prosecutor.

4. The provisions of the Criminal Code and of the Criminal Procedure Act shall apply in cases where persons resist identification or, without valid reason, refuse to identify themselves or to voluntarily undergo the checks or identification procedures.

Article 21

1. The agents of the Security Forces and Bodies may enter and search homes only in the cases permitted by the Constitution and under the conditions contemplated in the laws.

2. For the purposes of the preceding paragraph, well-founded knowledge on the part of the Security Forces and Bodies convincing them that one of the offences punishable under the Criminal Code in connection with toxic drugs, narcotics or psychotropic substances is being committed or has just been committed shall constitute legitimate grounds for entering and searching a home in connection with a flagrante delicto, provided that the urgent intervention of the agents is necessary to prevent the perpetration of the offence, the flight of the offender or the disappearance of the evidence or instruments of the offence.

3. The need to avoid imminent and serious injury or damage to persons and property in cases of catastrophe, disaster, imminent ruin and other similar circumstances of extreme and urgent necessity shall constitute legitimate and sufficient grounds for entering a home.

In cases of this kind, for entry into buildings occupied by official bodies or public agencies the consent of the authority or official in charge of the building shall not be required.

4. When, for the reasons set forth in the present article, the Security Forces and Bodies enter a home, they shall immediately prepare a report or statement and forward it without delay to the competent judicial authority.

Article 22

1. For enforcing the orders issued in compliance with this Law, the competent authorities may, by way of applying the sanctions provided for in it, impose fines under the terms of article 107 of the Administrative Procedure Act.

2. In all cases sufficient time must be given to comply with the order, depending on its nature and purposes, after which fines may be imposed in proportion to the seriousness of the breach. Such fines shall not exceed 25,000 pesetas, although they may be successively increased by 50 per cent in the event the aforementioned breach is repeated, being limited, however, to the maximum amounts stipulated for sanctions.

CHAPTER IV

System of Penalties

Section One. Infractions

Article 23

For the purposes of this Law, the following shall constitute serious infractions:

(a) The manufacture, repair, storage, trading, acquisition, transfer, possession or use of prohibited firearms or non-catalogued explosives, or of regulation firearms or catalogued explosives without the required documentation or authorization or in amounts exceeding the allowed limits, provided that the conduct in question does not constitute a criminal offence;

(b) The failure to take the mandatory measures or precautions to guarantee the safety of firearms or explosives, or the taking of inadequate or insufficiently effective measures or precautions;

(c) The holding of meetings in public thoroughfares or of demonstrations without complying with the requirements of articles 8, 9, 10 and 11 of Constitutional Law No. 9/1983 on the Right of Assembly, the responsibility for which lies with the organizers or promoters, provided that the conduct in question does not constitute a criminal offence;

(d) The opening of establishments or the holding of public spectacles or recreational activities without authorization or in a manner that exceeds the scope of the authorization;

(e) The admission of a larger-than-appropriate number of spectators or users to premises or establishments;

(f) The holding of public spectacles or recreational activities in violation of a prohibition or suspension ordered by the appropriate authority;

(g) The provoking among the spectators of reactions that disrupt or may disrupt public safety;

(h) The toleration of the illegal consumption of or trafficking in toxic drugs, narcotics or psychotropic substances in public premises or establishments, or the lack of diligence in preventing this, on the part of the owners, administrators or persons in charge;

(i) Failure to comply with statutorily imposed restrictions on the operation of high-speed vessels;

(j) The submission of false data or information for the purpose of acquiring the documents contemplated in this Law, provided that this does not constitute a criminal offence;

(k) The failure to maintain the registers called for in Chapter II of this Law for activities of relevance to public safety;

(l) The refusal to provide access for, or the obstruction of, the performance of the statutory inspections or controls required under the provisions of this Law at factories, premises and establishments, and on vessels and aircraft;

(m) The causing of serious disturbances in public streets, spaces or establishments, or the infliction of serious damage on public property, provided that this does not constitute a criminal offence;

(n) The opening of an establishment, the commencement of its activities, or its continued operation without authorization or without adopting, in whole or in part, the mandatory security measures, or when these measures fail to function or function improperly, or before the competent authority has indicated its acceptance of the measures;

(o) The commission of a third minor infraction within the space of one year, the penalty in which case shall be that provided for a serious infraction.

Article 24

The infractions described in sections (a), (b), (c), (d), (e), (f), (h), (i), (l) and (n) of the preceding article may be regarded as very serious when the extent of the risk or damage caused warrants it, or when they involve a danger to public health, have detrimentally affected the operation of public services, public transport or the reliability of supplies, or have been carried out using group violence or threats.

Article 25

1. The consumption in public places, streets, establishments or conveyances, as well as the illicit possession, even if not for the purposes of trafficking, of toxic drugs, narcotics or psychotropic substances, provided no criminal offence is involved, and also the abandonment of apparatus or instruments used for the consumption of these substances at the aforementioned places, shall constitute serious infractions of public safety.

2. The penalties imposed for these infractions may be suspended if the offender submits to a programme of detoxication treatment at an officially recognized centre or service in the manner and for the period statutorily prescribed.

Article 26

The following shall constitute minor infractions of public safety:

(a) Failure to comply with the obligation to obtain the personal identity document;

(b) Refusal to hand over the personal identity document when its withdrawal or retention has been ordered;

(c) The failure to take measures, or the taking of inadequate measures, to guarantee the safekeeping of documents relating to firearms or explosives, or the failure to report the loss or theft of these documents;

(d) The admission of minors to public establishments or to places where spectacles are held, when this is prohibited, and also the sale or serving of alcoholic beverages to minors;

(e) The failure to observe the hours established for the time during which establishments may be open and public spectacles or recreational activities may be held;

(f) Irregularities in the recording of entries in the registers required for activities of relevance to public safety, and the failure to provide the mandatory data or notifications within the time-periods established;

(g) The exhibition of objects dangerous to personal physical integrity for the purpose of causing intimidation;

(h) The disobeying of the orders of the authorities and their agents issued in direct application of the provisions of this Law, provided that such disobedience does not constitute a criminal offence;

(i) The disruption of public safety and the causing of disturbances in public streets, spaces or establishments;

(j) All those infractions that, not being classified as serious or very serious, involve a failure to comply with the obligations, or a violation of the prohibitions, established in this Law or in special laws regarding public safety, in special regulations, or in police regulations issued in compliance therewith.

Article 27

The administrative infractions contemplated in this Law shall be timed-barred after three months, one year or two years following their commission, in the case of minor, serious or very serious infractions, respectively.

Section Two. Penalties

Article 28

1. One or more of the following penalties may be imposed by the competent authorities for the infractions described in the preceding section:

(a) A fine of from five million and one pesetas to 100 million pesetas for very serious infractions; of from 50,001 pesetas to five million pesetas for serious infractions; and of up to 50,000 pesetas for minor infractions;

(b) Withdrawal of firearms and of the licences or permits authorizing their possession;

(c) Confiscation of the instruments or property used for the commission of the infractions, and in particular of firearms, explosives, high-speed vessels, or toxic drugs, narcotics or psychotropic substances;

(d) Temporary suspension of licences, authorizations or permits for a period of from six months and one day to two years for very serious infractions, and of up to six months for serious infractions, for the matters regulated in Chapter II of this Law;

(e) Closure of factories, premises or establishments for a period of from six months and one day to two years for very serious infractions, and of up to six months for serious infractions, for the matters regulated in Chapter II of this Law.

In serious cases involving repetition of the offence, the suspensions and closures referred to in the preceding sections may be imposed for a period of from two years and one day to six years for very serious infractions and of up to two years for serious infractions.

2. For the infractions contemplated in article 25, penalties may also be imposed in the form of the suspension, for a period of up to three months, of the permit to drive a motor vehicle or the withdrawal of the firearms permit or licence and, in any case, the confiscation of the toxic drugs, narcotics or psychotropic substances.

3. In cases of serious or very serious infractions, the applicable penalties may be replaced by expulsion from Spanish territory when the offenders are foreign nationals, in accordance with the legislation on the rights and freedoms of foreign nationals in Spain.

4. The penalties shall be time-barred after one year, two years or four years depending on whether the infractions for which they have been imposed are classified as minor, serious or very serious.

Article 29

The following bodies and persons shall be competent to impose the penalties referred to in the preceding article:

(a) The Council of Ministers, for any of the penalties provided for in this Law, for very serious, serious or minor infractions;

(b) The Minister of the Interior, for fines of up to 50 million pesetas and any of the other penalties contemplated, for very serious, serious or minor infractions;

(c) The heads of the bodies referred to in article 2 (b) of this Law, for fines of up to 10 million pesetas and any of the other penalties contemplated, for very serious, serious or minor infractions;

(d) The civil governors and the Government's representatives in Ceuta and Melilla, for fines of up to one million pesetas, the penalties provided for in sections (b) and (c) of the preceding article, and the temporary suspension of licences and authorizations for a period of up to six months, for serious or minor infractions;

(e) The Government's representatives in territorial divisions smaller than a province, for fines of up to 100,000 pesetas and the penalties provided for in sections (b) and (c) of the preceding article, for serious or minor infractions.

2. For serious or minor infractions involving public spectacles and recreational activities, the unlawful possession or public consumption of drugs, and for the minor infractions described in sections (g), (h), (i) and (j) of article 26, the mayors shall be competent, following a hearing by the Local Safety Board (Junta Local de Seguridad), to impose the penalty of suspending such authorizations or permits as may have been granted by the town councils (municipios), and also fines in the following maximum amounts:

- Towns of more than 500,000 inhabitants, up to one million pesetas;
- Towns of 50,000 to 500,000 inhabitants, up to 100,000 pesetas;
- Towns of 20,000 to 50,000 inhabitants, up to 50,000 pesetas;
- Towns of less than 20,000 inhabitants, up to 25,000 pesetas.

When the case does not involve the circumstances contemplated in the preceding paragraph, in matters to which that paragraph refers, the mayors shall inform the competent authorities of the facts or, following the corroboration of the materials of the case, shall propose the imposition of the appropriate penalties.

Article 30

1. Within the limits established by this Law, the amount of the fines and the duration of the temporary penalties imposed for the commission of infractions may be determined in accordance with the relevant regulatory provisions, taking into account the seriousness of the infraction, the extent of the damage that it has caused, and its possible implications for the prevention, maintenance or restoration of public safety.

2. Identical criteria shall be taken into account by the authorities responsible for imposing the penalties, who shall also consider, when specifying the penalties to be imposed and, where applicable, determining the amount of the fines or the duration of the temporary penalties, the offender's degree of guilt, possible involvement in previous offences and ability to pay.

Section Three. Proceedings

Article 31

1. No penalty may be imposed for the infractions contemplated in this Law except after proceedings have been held on the matter, respecting the right of the interested party to be heard and the need for economy, due speed and expeditiousness of proceedings.

2. Except as provided for in this section, penalty proceedings shall be conducted in accordance with the provisions of the Administrative Procedure Act.

3. Any of the authorities mentioned in article 2 of this Law, acting within their respective territorial divisions, shall be competent to order the institution of penalty proceedings, regardless of the penalty to be ultimately imposed.

Article 32

1. Criminal and administrative penalties may not be imposed for the same act.

2. When the acts referred to in this Law may involve a criminal offence, the essential records of the measures taken shall be forwarded to the Office of the Public Prosecutor, although this shall not preclude the institution of penalty proceedings for the same acts. Nevertheless, the final ruling on the case may be pronounced only after the ruling delivered on the criminal aspects has acquired force of law, until which time the period of limitation shall be interrupted.

3. The precautionary measures adopted by the penalizing authorities before the judicial examination may remain in force as long as no express ruling on the matter has been pronounced by the judicial authorities.

Article 33

In criminal proceedings involving the Office of the Public Prosecutor, when a discontinuance or stay of proceedings or a sentence of acquittal has been ordered on the grounds that the acts have been found not to constitute a criminal offence, that Office must forward to the penalizing authority a copy of the ruling and of such details as it deems necessary when they may give rise to an administrative penalty in accordance with the provisions of this Law.

Article 34

In the cases considered in the two preceding articles, the penalizing authority shall be bound by what has been declared proven by the courts.

Article 35

In all penalty proceedings instituted with regard to the matters that are the subject of this Law, the authority that has ordered their initiation may decide either to appoint an inquiring official and secretary, in accordance with article 135 of the Administrative Procedure Act, or to entrust the inquiries in the case to the appropriate administrative unit.

Article 36

1. Once penalty proceedings have been initiated, the necessary precautionary measures may be taken to ensure the normal course of the proceedings, prevent the commission of fresh infractions or ensure the carrying out of the penalty that may be imposed.

2. These measures, which must be commensurate with the nature and seriousness of the infraction, may take the form of the adoption of precautions and the taking of steps to maintain or restore public safety, in accordance with the provisions of this Law, and especially of:

(a) The storage in a safe place of the instruments or property used to commit the infractions, and in particular of firearms, explosives, high-speed vessels, or toxic drugs, narcotics or psychotropic substances;

(b) The adoption of temporary security measures for persons, property, establishments or installations that may be in danger, to be taken by the owners;

(c) The suspension or preventive closure of factories, premises or establishments;

(d) The suspension, in part or in whole, of the activities of establishments that are recognized as vulnerable and do not have in operation the mandatory security measures and devices;

(e) The preventive withdrawal of authorizations, permits, licences and other documents issued by the administrative authorities, in accordance with the provisions of this Law.

3. The duration of the temporary precautionary measures may not exceed half the period provided for in this Law for the penalty that may be applicable to the infraction committed.

4. In exceptional cases, involving the possible disappearance of firearms or explosives, serious risk or imminent danger to persons or property, the measures contemplated

in section 2 (a) above may be ordered directly by the authorities' agents, being subject to approval or revocation by the authorities within a maximum period of 48 hours.

Article 37

In penalty proceedings instituted with regard to matters that are the subject of this Law, the information supplied by any of the authorities' agents who may have witnessed the acts, shall, following its corroboration if the acts are denied by those charged, constitute sufficient grounds for adopting the appropriate ruling, except where there is evidence to the contrary and without prejudice to the agents' duty to present all the evidence available at the proceedings.

Article 38

1. The penalties imposed in the matters that are the subject of this Law shall be enforceable once the ruling, having passed through the necessary administrative stages, becomes final.

2. When the penalty is of a monetary nature and the law or regulations specify no period for complying with it, the penalizing authority shall set this period, which may not be less than 15 or more than 30 working days.

Article 39

Once it has passed through the necessary administrative stages to become final, a ruling in penalty proceedings for serious and very serious infractions may be made public, with the agreement of the competent authorities and under such conditions as may be prescribed by regulation.

Additional Provision

For the purposes of this Law, the authorities shall take into account corresponding laws of the Autonomous Communities that are empowered to protect persons and property and to maintain public safety, in accordance with the provisions of the relevant statutes and of the Constitutional Law on Security Forces and Bodies, said Autonomous Communities being entitled to impose the penalties and other measures specified in this Law in regard to the matters over which they exercise competence.

Repealing Provision

The following are repealed:

- Public Order Act No. 45 of 30 July 1959;
- Act No. 36 of 21 July 1971 amending certain articles of the Public Order Act;
- Royal Decree-Law No. 6 of 25 January 1977 amending certain articles of the Public Order Act;
- Section 5 of article 2 of Act No. 62 of 26 December 1979 regarding the jurisdictional protection of the fundamental rights of the person;
- Royal Decree No. 3 of 26 January 1979 on the Protection of Public Safety;
- Any other provisions, of equal or lower rank, in conflict with the provisions of this Law.

Final Provisions

First. The provisions of this Law and any others that for reasons of public safety the Government may approve in compliance with it shall be understood as having been enacted within the terms of article 149.1.29 of the Constitution.

Second. 1. The provisions regarding public spectacles and recreational activities contained in this Law, and also the regulations developing them, shall be generally applicable in the absence of provisions of a similar nature enacted by the Autonomous Communities with regulatory competence in these areas.

2. In all cases, the responsibility for enforcing the aforementioned provisions shall lie with the Autonomous Communities with competence in the area in question.

Third. This Law shall have the character of constitutional law except in articles 2, 3, 4, 5.1, 6, 7, 8, 9, 12, 13, 22, 23 (in all sections of paragraph 1 except section (c)), 25, 26, 27, 28.1 and 28.3, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, the repealing provision and final provisions first, second, fourth and fifth, which shall have the character of ordinary law.

Fourth. The Government shall issue such regulatory provisions as may be required to establish the security and control measures that may be imposed on organizations or establishments.

Fifth. The Government is authorized to periodically adjust the quantities of the monetary penalties provided for in this Law in accordance with movements in the Consumer Price Index.

Now therefore,

I order all Spaniards, individuals and authorities, to observe and ensure the observance of this Constitutional Law.

Madrid, 21 February 1992.

JUAN CARLOS R.

President of the Government
Felipe González Márquez